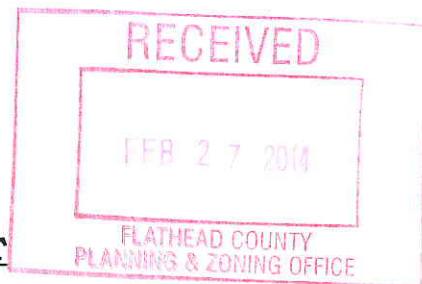




Flathead County
Planning & Zoning
1035 1st Ave W, Kalispell, MT 59901
Telephone 406.751.8200 Fax 406.751.8210



PETITION FOR ZONING AMENDMENT

Submit this application, all required information, and appropriate fee (see current fee schedule) to the Planning & Zoning office at the address listed above.

FEE ATTACHED \$ 1370.00

APPLICANT/OWNER:

1. Name: Mark G. Owens Phone: (406)250-2614
2. Mail Address: 500 Palmer Drive
3. City/State/Zip: Kalispell, MT 59901
4. Interest in property (if map amendment): Owner

Check which applies: ☒ Map Amendment ☐ Text Amendment:

TECHNICAL/PROFESSIONAL PARTICIPANTS:

1. Name: Sands Surveying Inc. Phone: (406) 755-6481
2. Mailing Address: 2 Village Loop
3. City, State, Zip: Kalispell, MT 59901
4. Email: eric@sandssurveying.com

IF THE REQUEST PERTAINS TO AN AMENDMENT TO THE TEXT OF THE ZONING REGULATIONS, PLEASE COMPLETE THE FOLLOWING:

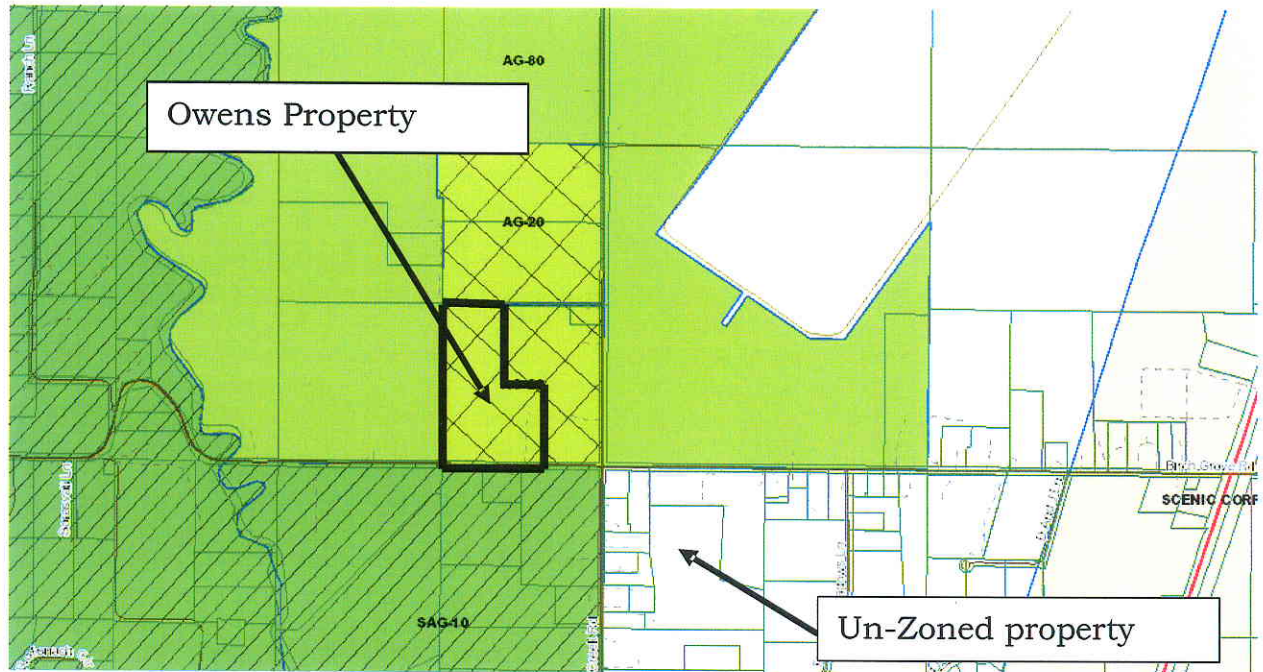
- A. What is the proposed zoning text/map amendment? N/A

IF THE REQUEST PERTAINS TO AN AMENDMENT TO THE ZONING MAP PLEASE COMPLETE THE FOLLOWING:

- A. Address of the property: 715 Birch Grove Road, Kalispell
- B. Legal Description: Tract 3D (See Attached Warranty Deed)
(Lot/Block of Subdivision or Tract #)
9 - T29N - R21W
Section Township Range
(Attach sheet for metes and bounds)
- C. Total acreage: 19.386 acres
- D. Zoning District: Airport West Zoning District
- E. The present zoning of the above property is: AG-20 (Agricultural)
- F. The proposed zoning of the above property is: SAG-5 (Suburban Agricultural)
- G. State the changed or changing conditions that make the proposed amendment necessary: The property is 19.386 acres in size and the applicants would like to split the property to create a building site for the owners son. The SAG-5 would allow the owners the ability to split the property where as the AG-20 or

the SAG-10 would not. Although the applicant's property is not directly adjacent to SAG-5 property it does abut SAG-10 properties to the south.

Figure 1



THE FOLLOWING ARE THE CRITERIA BY WHICH ZONING AMENDMENTS ARE REVIEWED. PLEASE PROVIDE A RESPONSE AND DETAILED EXPLANATION FOR EACH CRITERION FOR CONSIDERATION BY THE PLANNING STAFF, PLANNING BOARD, AND COMMISSIONERS.

1. Is the proposed amendment in accordance with the Growth Policy/Neighborhood Plan?

The property is located within the boundary of the Flathead County Growth Policy. The Growth Policy Map identifies the property as "Agriculture". The Flathead County Growth Policy Map is not a future land use designation map that is traditionally used with a Growth Policy but an existing land use map that generally depicts the existing zoning categories as its base. The SAG-5 (Suburban Agriculture) designation is a land use category that is consistent with and generally conforms to the "Agricultural" designation.

The Flathead County Growth Policy identifies a number of Goals and Policies that support the proposed Map Amendment.

G.2 – Preserve the rights of property owners to the use, enjoyment and value of their property and protect the same rights for all property owners.

P.3.3 – Maintain flexibility of land use option to forest and agriculture land owners by focusing on mitigating the negative impacts of development.

The proposed zoning designation will grant flexibility to create a parcel of land for the owners son with a density that mitigates the impacts on neighboring agricultural practices.

G.4 – Preserve and protect the right to farm and harvest as well as the custom, culture, environmental benefits and character of agriculture and forestry in Flathead County while allowing existing landowners flexibility of land use.

The SAG-5 designation allows for agricultural use which is consistent with the neighboring land uses and zoning classifications. The proposed SAG-5 will allow the owner to sell a piece of property to his son to build a home.

P.4.3.- Identify a desirable gross density for rural residential development that retains land values, preserves the agricultural character of the community and allows for efficient provision of government services (law enforcement, fire protection, transportation, etc.)

The five acre density proposed with the Map Amendment will preserve the agricultural character of the neighborhood while allowing for the efficient provision of government services.

G.8 – Safe, healthy residential land use densities that preserve the character of Flathead County, protect the rights of landowners to develop land, protect the health, safety, and welfare of neighbors and efficiently provide local services.

The proposed SAG-5 will allow a density of 1 unit per five acres. As the property is 19.3 acres in size the maximum number of lots would be three (Two Additional lots). However the applicant only wants to create one additional lot for his son to build a house. Existing services should not be impacted by the proposed change in density for the site.

2. Is the proposed amendment designed to:

- a. Secure safety from fire and other dangers? The subject property is within the Evergreen Fire District. According to Ben Covington, with Evergreen Fire Rescue the proposed zone change will not impact the district. Response times are approximately seven minutes and Evergreen Fire Rescue has a unmanned substation on Birch Grove Road. The

property is located on the valley floor with vegetation limited to decorative landscaping and a small tree farm. The property is not mapped in the WUI or designated as a high fire hazard area.

- b. Promote public health, public safety and the general welfare? The property fronts on Birch Grove Road which is a paved County collector that links Highway 2 on the east to Whitefish Stage to the west. Birch Grove provides convenient and safe access to the property. The Flathead County Sheriff's Office provides police protection and the Evergreen Fire and Rescue provides fire and ambulance service. The proposed SAG-5 zoning classification provides the same setback and height standards as the existing AG-20 zone and very similar land use restrictions. The uses permitted and conditionally permitted by the Flathead County Zoning Regulations for the AG-20 (existing) and SAG-5 (proposed) are almost identical. The exceptions are the AG-20 allows Dairy product processing, Ranch Employee Housing and Stables as permitted uses while the SAG-5 does not. The AG-20 allows, with a Conditional Use Permit (CUP), Feed and Seed processing Plants and Feed Lots whereas the SAG-5 does not, but the SAG-5 allows Golf Courses, Kennels and RV Parks with a CUP.
- c. Facilitate the adequate provision of transportation, water, sewerage, schools, parks and other public requirements? The property has access to Birch Grove Road which is a paved County maintained road. The subject property is currently serviced by individual sewer and water systems and the proposed lot will also utilize such systems. There is an existing house with a drainfield on the property. The septic system application (approved 10/26/95 Permit #95-1633N) for the house. Groundwater was at 66 inches. Water wells are good in this area. The property is within the Kalispell School District. School aged children would attend Edgerton Elementary School, Kalispell Middle School, and Glacier High School for education. In general, larger lots like the 5 plus acres proposed with the SAG-5 zoning require less park land than more urban densities.

3. Does the proposed amendment consider:

- a. The reasonable provision of adequate light and air? The proposed SAG-5 zoning designation has a minimum lot size of five acres and identical setbacks to the AG-20. Birch Grove Road area consists of a mix of lots sizes ranging from 1 to 80 acres in size. The proposed SAG-5 zoning designation does provide adequate light and air.
- b. The effect on motorized and non-motorized transportation systems? The subject parcel has direct access to Birch Grove Road which is paved and constructed to County Standards within a 60-foot road right-of-way. The road network provides good access for vehicles and with the relatively low traffic volumes (966 per day according to the Flathead County Road Department 2012 counts) provides good access for bike and pedestrian use. There are no public bike or pedestrian trails near the subject property.
- c. Compatible urban growth in the vicinity of cities and towns that at a minimum must include the areas around municipalities? The subject property is not located within close proximity of a City or town. The existing zoning designation and the proposed designation are both "Rural" in land use and density.
- d. The character of the district and its peculiar suitability for particular uses? The subject parcel is a 19.386 acre tract that is surrounded by a mix of uses and densities. (See Figure 2). The property to the south is farm and pasture with zoning of SAG-10 and tracts ranging 2 to 20 acres in size. The property to the east is farm pasture and runway (Glacier International) with zoning of AG-20 and AG-80 and tracts of 2 to 40 acres in size. The property to the north is farmed with zoning of AG-20 and tracts 1 to 20 acres in size. The properties to the west are farmed and zoned AG-80 with tracts of 20 to 40 acres in size. The uses allowed in the AG 20 are almost identical to those of the proposed SAG-5.

Figure 2



Considering the provisions of Spot Zoning and the “Three Part Test” as provided by legal precedent in Little vs. Board of County Commissioners, Spot Zoning is determined by the Court to be an illegal action if the request is found to meet **all** three of the tests. The three tests are as follows:

- i. *The zoning allows a use that differs significantly from the prevailing use in the area.*

The proposed SAG-5 zoning classification provides the same setback and height standards as the existing AG-20 zone and very similar land use regulations. The uses permitted and conditionally permitted by the Flathead County Zoning Regulations for the AG-20 (existing) and SAG-5 (proposed) are almost identical. The exceptions are the AG-20 allows Dairy product processing, Ranch Employee Housing, and Stables as

permitted uses while the SAG-5 does not. The AG-20 allows, with a Conditional Use Permit (CUP), Feed and Seed processing Plants and Feed Lots whereas the SAG-5 does not, but the SAG-5 allows Golf Courses, Kennels and RV Parks with a CUP. As the land uses in both the existing and proposed zoning districts are almost identical, the proposed action does not meet this test

- ii. The zoning applies to a small area or benefits a small number of separate landowners.

The proposed zone change encompasses 19.3 acres. Although this is not a huge property it is about average size in the surrounding neighborhood. This test is a matter of opinion as to the scale of the request and could be argued either way. However request most likely would meet this part of the test.

- iii. The zoning is designed to benefit only one or a few landowners at the expense of the surrounding landowners or the general public and this is in the nature of special legislation.

The property proposed for the zone change is under a single ownership; however, the property abuts a large swath of SAG-10 designations. The SAG-5 and SAG-10 are almost identical except for the density. Approving the proposed zone change will blend with surrounding neighborhoods and is not considered a special benefit. The proposed action does not meet this test.


As presented the proposed zone change application does not meet **all** three tests for "spot zoning" and therefore should be considered a legal request.

- e. Conserving the value of buildings and encouraging the most appropriate use of land throughout the jurisdictional area? The permitted and conditionally permitted uses of the proposed Zoning designation of SAG-5 are almost identical to that of the existing AG-20 zoning classification. The primary difference between the two zoning designations is the density where the proposed zoning designation has a minimum lot size of 5 acres per lot and the existing zoning designation has a minimum lot size of 20 acres per lot.

4. Is the proposed amendment, as nearly as possible, compatible with the zoning ordinances of nearby municipalities?

The nearest City Zoning is the Kalispell Zoning Jurisdiction which is approximately 2.5 mile to the southwest at Church Drive and Highway 93. The City's zoning is comprised of R-2, R-4, and B-1 PUD at that location. The City zoning designations are urban in scale and density and do not have any continuity with the applicants property.

The signing of this application signifies approval for the Flathead County Planning & Zoning staff to be present on the property for routine monitoring and inspection during approval process.


Owner/Applicant Signature(s)

2-26-2014
Date

APPLICATION PROCESS

APPLICABLE TO ALL ZONING APPLICATIONS:

A. Pre-Application Meeting:

A pre-application meeting is highly recommended. This can be scheduled at no cost by contacting the Planning & Zoning office. Among topics to be discussed are: Master Plan compatibility with the application, compatibility of proposed zone change with surrounding zoning classifications, and the application procedure.

B. Completed application.

C. Application fee.

D. The application must be accepted as complete by the Flathead County Planning & Zoning staff prior to the date of the planning board meeting at which it will be heard in order that requirements of state statutes and the zoning regulations may be fulfilled.

APPLICABLE TO APPLICATIONS FOR ZONE CHANGE:

A. Application Contents:

1. Completed Zone Change application, including signatures of all property owners applying for zoning map amendment.

IF this is a **MAP** amendment the following are also required:

- i) A map showing the location and boundaries of the property (*vicinity map*).
- ii) A Title Report of the subject property
- iii) **Certified** Adjoining Property Owners List must be submitted with the application (*see forms below*). The list will be sent directly to the Planning & Zoning office, unless you request otherwise. This list is valid for a period of 6 months from date generated. You may also get a certified adjoining landowners list from a title company if you choose.

CERTIFICATE OF SURVEY
NW 1/4, Sec. 9, T29N R21W
Flathead County, Montana

OWNER: MARY E. WALTERS
PURPOSE: PARCEL A: FAMILY TRANSFER
PARCEL B: REMAINDER
DATE: NOVEMBER 19, 1993

LEGAL DESCRIPTIONS

PARCEL A:

THE PORTION OF THE SOUTHEAST 1/4 OF THE NORTHWEST 1/4, SECTION 9, TOWNSHIP 29 NORTH, RANGE 21 WEST, FLATHEAD COUNTY, MONTANA DESCRIBED AS FOLLOWS:
COMMENCING AT THE NORTHWEST CORNER OF THE SOUTHEAST 1/4 OF THE NORTHWEST 1/4; THENCE ALONG THE WEST LINE OF THE SOUTHEAST 1/4 OF THE NORTHWEST 1/4 SOUTH 0°25'24" EAST 19.00 FEET TO THE POINT OF BEGINNING; THENCE NORTH 89°42'59" EAST 477.31 FEET; THENCE SOUTH 637.39 FEET; THENCE EAST 338.91 FEET; THENCE SOUTH 664.95 FEET TO THE SOUTH LINE OF THE SOUTHEAST 1/4 OF THE NORTHWEST 1/4; THENCE ALONG THE SOUTH AND WEST LINES OF THE SOUTHEAST 1/4 OF THE NORTHWEST 1/4 SOUTH 89°45'16" WEST 809.72 FEET AND NORTH 0°25'24" EAST 1303.48 FEET TO THE POINT OF BEGINNING CONTAINING 19.386 ACRES OF LAND ALL AS SHOWN HEREON.
SUBJECT TO COUNTY ROAD RIGHT-OF-WAY AS SHOWN.

PARCEL B:

THAT PORTION OF THE SOUTHEAST 1/4 OF THE NORTHWEST 1/4, SECTION 9, TOWNSHIP 29 NORTH, RANGE 21 WEST, FLATHEAD COUNTY, MONTANA DESCRIBED AS FOLLOWS:
BEGINNING AT THE SOUTHEAST CORNER OF THE SOUTHEAST 1/4 OF THE NORTHWEST 1/4; THENCE ALONG THE SOUTH LINE OF THE SOUTHEAST 1/4 OF THE NORTHWEST 1/4 SOUTH 89°45'16" WEST 544.44 FEET; THENCE NORTH 664.95 FEET; THENCE WEST 338.91 FEET; THENCE NORTH 637.39 FEET; THENCE NORTH 89°42'59" EAST 840.28 FEET TO THE EAST LINE OF THE SOUTHEAST 1/4 OF THE NORTHWEST 1/4; THENCE ALONG THE EAST LINE OF THE SOUTHEAST 1/4 OF THE NORTHWEST 1/4 SOUTH 0°15'50" EAST 1304.35 FEET TO THE POINT OF BEGINNING CONTAINING 20.000 ACRES OF LAND ALL AS SHOWN HEREON.
SUBJECT TO COUNTY ROAD RIGHT-OF-WAY AS SHOWN.

OWNER CERTIFICATION

I HEREBY CERTIFY THAT THE PURPOSE OF THIS DIVISION OF LAND IS TO TRANSFER PARCEL A AS SHOWN ON THIS CERTIFICATE OF SURVEY TO CAROL WALTERS MY DAUGHTER.
FURTHERMORE, I CERTIFY THAT I AM ENTITLED TO USE THIS EXEMPTION AND AM IN COMPLIANCE WITH ALL CONDITIONS IMPOSED BY LAW AND REGULATION ON THE USE OF THIS EXEMPTION. THEREFORE THIS DIVISION OF LAND IS EXEMPT FROM REVIEW AS A SUBDIVISION PURSUANT TO SECTION 76-3-207(1)(B), MCA.

Mary E. Walters
MARY E. WALTERS

STATE OF MONTANA
COUNTY OF FLATHEAD

SS.

ON THIS 4th DAY OF April, 19 94, BEFORE ME, THE UNDERSIGNED, A NOTARY PUBLIC FOR THE STATE AFORESAID, PERSONALLY APPEARED MARY E. WALTERS, KNOWN TO ME TO BE THE PERSON WHOSE NAME IS SUBSCRIBED TO THE FOREGOING INSTRUMENT, AND ACKNOWLEDGED TO ME THAT SHE EXECUTED THE SAME.

IN WITNESS WHEREOF, I HAVE HEREUNTO SET MY HAND AND AFFIXED MY NOTARIAL SEAL THIS 4th DAY AND YEAR FIRST ABOVE WRITTEN.

Rose LaFontaine
NOTARY PUBLIC FOR THE STATE OF MONTANA
RESIDING AT Bigfork
MY COMMISSION EXPIRES 4/27/96

APPROVED: April 5, 19 94

Jan H. Bels
EXAMINING LAND SURVEYOR
REGISTRATION NO. 5488 S

CERTIFICATE OF SURVEYOR

Dawn Marquardt
DAWN MARQUARDT
REGISTRATION NO. 751 S

STATE OF MONTANA
COUNTY OF FLATHEAD

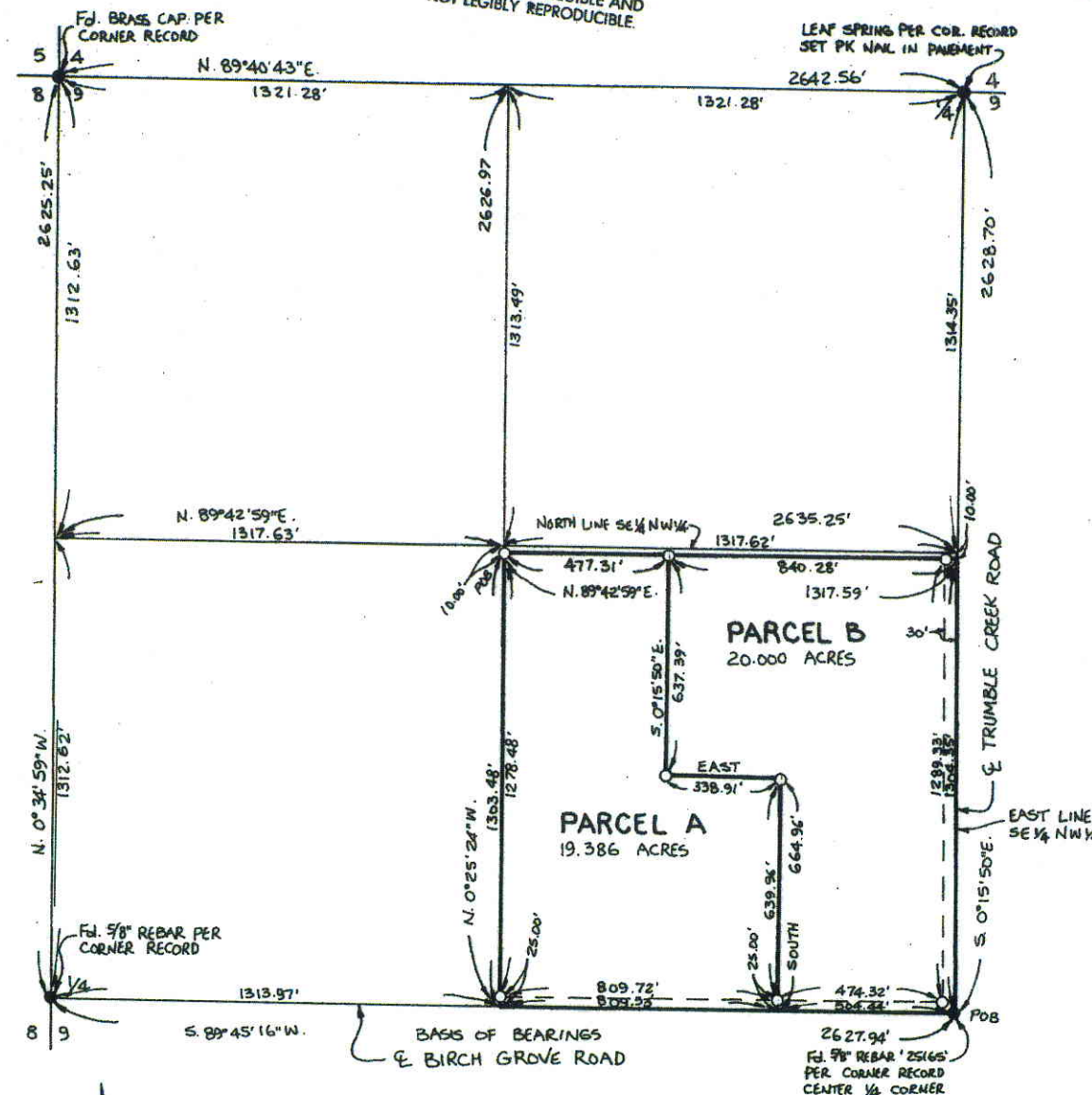
FILED ON THE 7 DAY OF April, 19 94, A.D., AT 4:30 O'CLOCK P M.

Susan W. Hartsfield
COUNTY CLERK AND RECORDER
BY Paul R. Brown DEPUTY

INSTRUMENT REC. NO. 9409716300

CERTIFICATE OF SURVEY No. 11622

WALTERS



MARQUARDT & McALISTER
SURVEYING, INC.
1081 South Main (406) 755-6285
KALISPELL, MONTANA 59901